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In the Court of Criminal Appeals
At Austin

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COURT OF CRIMINAL APPEALS
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No. 01-19-00100-CR
In the Court of Appeals
For the First District of Texas
At Houston

No. 1620108
In the 209th District Court
Of Harris County, Texas

***Ex parte* Maurice Edwards**
Appellant

Appellant's Brief on Discretionary Review

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IDENTITY OF PARTIES AND COUNSEL

Presiding Judge:	Honorable Brian Warren
Appellant:	Maurice Edwards
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Statement of the Case

On January 31, 2019, the trial court held a hearing on appellant's pretrial writ of habeas corpus (RR 1: 1). The trial court denied relief on the writ (RR 1: 25) and appellant gave notice of appeal (RR 1: 25; CR 1: 13-14).

On August 27, 2019, in an opinion which issued from the Court of Appeals for the First District of Texas, the order of the trial court denying appellant habeas relief was reversed, the requested habeas relief was granted, and the case was remanded to the trial court for further proceedings consistent with the opinion. *Ex parte Edwards*, NO. 01-19-00100-CR (Tex. App. –Houston [1st Dist.] 2019).

On September 9, 2019, the state filed its motion for en banc reconsideration.

On August 4, 2020, The Court of Appeals for the First District of Texas treated the state's motion as a request for a panel hearing, denied the motion for rehearing, withdraw its prior opinion and judgment of August 27, 2019, and issued a new opinion and judgment in their stead. In its opinion and judgment issued on August 4, 2020, the Court of Appeals for the First District of Texas reversed the trial court's order denying

appellant's requested habeas relief and remanded this matter to the trial court with instructions to enter an order granting appellant the habeas relief requested in his pretrial application for a writ of habeas corpus.

The State filed its petition for discretionary review on December 31, 2020. On April 21, 2021, this Court granted the state's petition for discretionary review. The state filed its brief on discretionary review on May 25, 2021.

Statement of Facts

Neither the state nor the appellant called any witnesses to testify at the pretrial writ of habeas corpus hearing. The appellant and the state stipulated to the facts contained in the HPD (Houston Police Department) ARCHIVED OLO INCIDENT REPORT 066092903 created 5/2/2003 that was admitted into evidence without objection as Defendant's Exhibit #4 (RR 1: 7; RR 2: 3, 7). Pertinent to discretionary review in this case are the following facts contained in the HPD archived OLO incident report 06-692903:

(1) On page 3 of 14, Maurice Edwards, date of birth 11/13/1977 is identified as the suspect number 01 (RR 2: 7).

(2) On page 6 of 14, Officer L. D. Garretson, in a supplement narrative dated 6 May 2003/TUESDAY, stated that a "REVIEW OF THE REPORT SHOWS THAT THE COMPLAINANT L. K. WF 23 WAS SEXUALLY ASSAULTED BY THE SUSPECT MAURICE ELLIS EDWARDS BM 25 11/13/77."

(3) On page 13 of 14, in supplement number 00012, entry date 2/5/2014, is the notation that laboratory testing has been completed in association with a request for CODIS analysis.

(4) On Page 14 of 14, in supplement number 00013, entry date 4/13/2014, is the notation that Officer J. Lewis received this case for further investigation regarding a CODIS match confirmation.

Also pertinent to the point for review number one are the following facts contained in Houston Police Department offense report 606929-03 which was admitted into evidence also as part of the stipulated evidence as Defendant's Exhibit 4 (RR 2: 3, 7).

(1) On page 1 of 2 and 2 of 2 in supplement number 6, it is stated that, on 9.20.2017, a search warrant to collect appellant Maurice Edwards' saliva was executed at the Harris County Jail and that the suspect's buccal swabs

were tagged at the Houston Police Property room. A request was made to analyze the listed DNA request and to compare the DNA to the male DNA that was found in the complainant's sexual assault kit.

(2) On page 1 of 2, in supplement number 10, the statement is made that "THE LAB RESULTS ARE STILL PENDING; HOWEVER, THE CASE HAS BEEN THOROUGHLY INVESTIGATED AND ADA HAS ACCEPTED CHARGES. CHARGES HAVE ALSO BEEN FILED AND THE SUSPECT IS CURRENTLY IN CUSTODY. LAB RESULT WILL BE UPDATED AT A LATER TIME."

SUMMARY OF THE ARGUMENT

Appellant's core position as stated to the habeas court judge was that the indictment on its face clearly showed that the prosecution was time-barred since the offense date was alleged to be May 2, 2003 and the indictment was not returned until November 16, 2017 which put it beyond the 10 year statute of limitations (RR 1: 6-7).

The statute relied on by the state to make its argument that the no limitation exception to the 10 year statute of limitations applied in appellant's case specifically requires a showing of the forensic DNA results. TEX. CODE CRIM. PROC. 12.01(1)(C)(i).

A pretrial writ of habeas corpus may be used to challenge the jurisdiction of the court if the face of the indictment shows that any prosecution is barred by the statute of limitations. *Ex Parte Smith*, 178 S.W.3d 797, 802 (Tex. Crim. App. 2005, rehearing denied 2005).

ARGUMENT

REPLY TO THE STATE'S FIRST GROUND FOR REVIEW

The state contends in its first ground for review that the First Court erred by holding that a shotgun objection and a complaint about another part of the statute preserved the appellant's appellate argument. As the First Court of Appeals opinion stated: "The trial court held a hearing on appellant's application. Appellant offered, and the trial court admitted into evidence without objection, a copy of the complaint, the indictment, Texas Code of Criminal Procedure Article 12.01, and a Houston Police Department ("HPD") offense report. The parties "stipulate[d] to the facts that [were] in the offense report" for the purposes of the hearing. *Ex Parte Edwards*, NO. 01-19-00100-CR (Tex. App. – Houston [1st Dist.] opinion issued August 4, 2020, PDR granted) at p. 3.

The First Court pointed out that, at the hearing, appellant reiterated

that his "core position" was that "the ten-year statute of limitations d[id] apply" to his case, he was " not … indicted until 2017," although the alleged sexual assault took place in 2003, the prosecution of appellant for the felony offense of aggravated sexual assault was "time-barred," and he was entitled to habeas relief. Id. at p. 9.

The appellate record supports the First Court's rendition of events. At the hearing, the complaint (RR 1: 6-7), the indictment (RR 1: 6-7), a copy of the applicable statute of limitations (RR 1: 7), and the HPD offense report were admitted into evidence without objection (RR 1: 7). On its face, the indictment reflects that its filing date of November 16, 2017 was more than 10 years past the May 2, 2003 offense commission date.

At the hearing appellant's attorney Mr. Kirk Oncken plainly argued to the trial court that the prosecution of his client for aggravated sexual assault was time barred because the indictment was presented more than ten years after the offense commission date.

"ARGUMENT BY MR. KIRK ONCKEN

MR. ONCKEN: So, the core position is, obviously, the ten-year statute of limitations does apply and the case not being indicted until 2017 would put it beyond. The prosecution should be time-barred, which is the

reason why we filed our writ (RR 1: 18)."

As applied to appellant's case, TEX CODE CRIM. PROC. Art. 12.01 states, in pertinent part, that:

"Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

….

(2) ten years from the commission of the offense:

….

(E) sexual assault, except as provided by Subdivision (1) …."

On its face the indictment shows that the offense charged is barred by limitations. Appellant had met his burden of proof and presumably Judge Warren would have granted relief except that the state argued that the exception set forth in subdivision (1) of Art. 12.01 was applicable to this case.

REPLY TO THE STATE'S SECOND GROUND FOR REVIEW

The state contends in its second ground for review that the First Court erred by holding that the state had to admit DNA test results at a pretrial habeas hearing challenging the validity of the charging instrument.

After appellant met his burden of proof showing that the prosecution of the offense alleged in the indictment was barred by the 10 year statute of limitations, the state asserted that the exception set forth in subdivision (1) of Art. 12.01 was applicable to this case. Art. 12.01(1)(C) states:

Except as provided in Article 12.03, felony indictments may be presented within these limits and not afterward:

(1) no limitation:

….

(C) sexual assault if, during the investigation of the offense biological material is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained.

The First Court of Appeals opinion cited *Ex parte Lovings,* 480 S.W.3d 106, 111-112 (Tex. App. – Houston [14th Dist.] 2015, no pet.) for the proposition that Tex. Code Crim. Proc. Article 12.01(1)(C)(i) does not impose "a duty on the State to look for a match" or a temporal limit on the state's investigation. Nevertheless, for Article 12.01(1)(C)(i)'s exception to the general ten-year statute of limitations to apply, each of the three

prongs set forth in Article 12.01(C)(i) must be met. Thus, it must be established that: (1) during the investigation of a sexual assault, biological matter was collected, (2) the biological matter was subjected to forensic DNA testing, and (3) the forensic DNA testing results showed that the matter did not match the victim or any other person whose identity was readily ascertained. *See* Tex. Code Crim. Proc. Ann. Art. 12.01(1)(C)(i); *Ex parte S.B.M.*, 467 S.W.3d 715, 719 (Tex. App. – Fort Worth 2015, no pet.). *Ex parte Edwards*, supra at p. 13.

The appellate record plainly shows that the state did not meet its burden of proof required by the third prong of Article 12.01(1)(C)(i), namely, that (3) the forensic DNA testing results showed that the matter did not match the victim or any other person whose identity was readily ascertained. However, under the **Statement of Facts** heading in its brief on discretionary review, the state, while citing the appellate record (2 RR 23-25), asserted that "The sexual assault kit was tested for DNA in 2013, and the next year a CODIS hit came back to the appellant." *See* state's brief at p. 8.

Appellant contests the accuracy of the state's appellate record

citation. Nowhere on pages 23-25 of the second volume of the reporter's record does it state that "a CODIS hit came back to the appellant" Maurice Edwards. The appellate record cited by the state at (2 RR 23-25) contains pages 12, 13, and 14 of the "HPD ARCHIVED OLO INCIDENT REPORT 060692903". Neither the appellant Maurice Edwards' name nor any assertion that "a CODIS hit came back to the appellant" appears on any one of the three pages of the police report that is contained in the appellate record and cited by the state.

Furthermore, nowhere in the appellate record may such an assertion be found. The appellate record reflects that the state was aware that the statutory requirements of Article 12.01(1)(C) had to be met before there would be no limitation concerning the time limits in which the aggravated sexual assault indictment was presented. At the very beginning of her argument to the trial court, Ms. Guice, the prosecutor, stated: "Starting with the plain language of the statute, 12.01(1)(C)(i) of the Texas Code of Criminal Procedure [it] is clear that there is no statute of limitations for a sexual assault if there's biological matter collected during the investigation that is subjected to forensic DNA testing and that the testing results show the biological matter does not match the victim or any other person whose

identity is readily ascertained (RR 1: 9)."

There were no forensic DNA testing results in evidence during the hearing. The First Court of Appeals was correct in finding that "the record does not establish that: … (3) the forensic DNA testing results showed that the matter did not match the victim or any other person whose identity was readily ascertained, and in concluding 'that Texas Code of Criminal Procedure Article 12.01(1)(C)(i)'s exception to the general ten-year statute of limitations does not apply to appellant's case. *Ex Parte Edwards,* supra at p. 25.

REPLY TO THE STATE'S THIRD GROUND FOR REVIEW

The state contends in its third ground for review that appellant's limitation claim is not cognizable on pretrial habeas because it is a fact-intensive non-constitutional defense and that the appellant has an adequate remedy at law through a motion to quash.

In its opinion, the First Court of Appeals cited those cases that directly dealt with the pretrial writ of habeas corpus. *Ex parte Ingram*, 533 S.W.3d 887, 891 (Tex. Crim. App. 2017) was cited for the proposition that a pretrial writ of habeas corpus is an extraordinary remedy. However, a defendant may

use a pretrial writ in very limited circumstances, including to challenge a court's jurisdiction if the face of the indictment shows that the statute of limitations bars a prosecution. *Ex parte Smith*, 178 S.W.3d 797, 802 (Tex. Crim. App. 2005); *Ex parte Tamez*, 38 S.W.3d 159, 160 (Tex. Crim. App. 2001). Limitations is an absolute bar to prosecution. *Ex parte Smith*, supra at 802. A statute of limitations is construed strictly against the State and liberally in favor of the defendant. *Ex parte Lovings*, supra at 111.

Clearly, an indictment such as the one in appellant's case that shows on its face that it is time-barred by an applicable statute of limitations is cognizable on a pretrial writ of habeas corpus.

Conclusion

Appellant prays that this Court affirm the First Court of Appeals' judgment.

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